

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 26, 2022

DISSENTING VIEWS

Ways and Means Committee Republicans vehemently oppose the Committee's action of holding a secretive executive session meeting on December 20, 2022, and voting to release unredacted individual tax returns and return information, including personally identifiable information (PII) of a minor child – documents that were previously protected as confidential under section 6103 of the Internal Revenue Code.¹ Committee Republicans oppose both the secretive process leading up to the meeting and the procedure and substance of the meeting itself. While the dangerous precedent is the biggest problem, it is worth noting for the record the reckless actions by the Majority during this process that violate House procedure and principles of good faith.

Most importantly, the Committee Majority's action set a dangerous new precedent. It is apparent from the proceedings that the Committee Majority set out with the goal of obtaining and publishing the former President's full tax returns. Everything since then has been a search for a rationale or justification that would be acceptable to the courts. Committee Republicans are not focused on whether the former President should have made his tax returns public, which has been tradition. Nor are Committee Republicans focused on the accuracy of those tax returns – that is for the IRS to determine in the ongoing audits of the former President.

Committee Republicans are concerned that this politically motivated action unleashes a dangerous new political weapon reaching far beyond the former President and overturns decades of privacy protections for average Americans. Going forward, the new precedent is that the Chairman of the House Ways and Means Committee and the Senate Finance Committee have nearly unlimited power to target and make public the tax returns of private citizens, political enemies, business or labor leaders, or even Supreme Court justices. No party in Congress should hold that power. No individual should hold the power to embarrass, harass, or destroy a private citizen through disclosure of their tax returns. But the Committee Majority has demonstrated that the tax-writing committees do have that power.

After nearly half a century, the political enemies list is back in Washington, D.C, and the Committee's actions on December 20, 2022, will unleash a new cycle of political retribution in Congress. It didn't have to be this way. Despite warnings about the long-term negative consequences, Democrats moved forward anyway. This development will simply make our politics more divisive and partisan. Even Democrats will come to regret this. And they may regret it sooner than they think.

¹26 U.S.C. § 6103 (2022).

**Committee Majority Employed Delay Tactics and Concealment in their
Secretive Process to Obtain and Make Public the Tax Returns**

On November 22, 2022, when the Supreme Court denied the former President's application for stay, D.C. Circuit Court of Appeals issued the formal mandate that would allow Committee Majority the ability to obtain the tax returns.

Committee Majority's report notes that agents designated by Chairman Neal under Section 6103(f) began review of tax returns and other tax information requested by the Chairman at IRS facilities on November 23, 2022. The report does not list who the agents were, but none of the agents were Republican Members or staff. In addition, neither Chairman Neal nor Majority Committee staff notified Ranking Member Brady or Republican staff that the Chairman had designated agents or accessed the 6103 materials. Keeping their actions secret for as long as possible was clearly a top priority for the Committee Majority.

On November 30, 2022, the Treasury Department publicly stated that it had complied with the court order to make the former President's tax returns available to the House Ways and Means Committee. That same day, anticipating that Treasury had just then complied with Chairman Neal's request, Ranking Member Brady sent a letter to the Chairman, formally requesting that he authorize Republican Members and staff timely access to the 6103 materials.

Ranking Member Brady met with Chairman Neal the morning of December 2, 2022 and reiterated his request for equitable access as stated in the November 30 letter. Chairman Neal said he would get back to the Ranking Member quickly. At the Committee business meeting on December 20, 2022, Chairman Neal said:

“When Mr. Brady made the request of me, I am not sure what the date was. I thought about it for a day... and said yes.”

This statement is perplexing. If true, it means that Chairman Neal decided to grant Republican staff access on December 2 or 3, and yet waited another 9 days to actually do so. Only after numerous follow-up requests by Republican staff did Committee Majority staff finally confirm that Republican staff would be designated as agents on December 11, 2022, with access beginning the next day.

Chairman Neal had no intention of proactively authorizing Republican Members or staff of the Committee as designated agents to review the 6103 materials. He only did so after Treasury publicly confirmed that Chairman Neal's request had been met and after Ranking Member Brady made a formal request and repeated follow-ups. As more information is gathered, Committee Majority's plans becomes apparent: they would delay granting Republicans access to the 6103 materials until their own review was complete.

Republican staff was told that the offsite locations for their viewing 6103 materials were open only from 9:30 a.m. to 5 p.m., Monday through Friday. It is unclear whether Committee Majority staff faced restrictions in hours for access. On the first day of Republican staff review, Committee Majority staff's failure to properly notify IRS of their arrival led to significant delays

in Republican staff's entry into the facility. Committee Majority staff had already been accessing the same facility for more than two weeks, so it is curious why Republican staff faced such delays.

In order to expedite future entry by Republican staff, an IRS employee offered her name and a personal phone number—which Committee Majority staff prohibited on the grounds that there was to be no communication between Republican staff, even for the sole purpose of passing an IRS vehicle checkpoint. What's more, Committee Majority staff forced IRS employees to keep careful watch of Republican staff, including restroom monitoring and taking phone calls immediately outside the room where the 6103 materials were kept. Committee Majority staff was not subject to the same level of monitoring, despite being subject to precisely the same legal obligations under Section 6103. The strict control exercised by Committee Majority staff over Republican staff is wholly unreasonable when weighed against the general carelessness Committee Majority displayed across so many critical aspects of the process for making confidential tax information public.

Chairman Neal's letter to IRS on June 16, 2021, contained the request for tax returns, but also a request for IRS response to a series of questions including audit status for the tax years under consideration. On December 13, 2022, after reviewing the 6103 materials, Republican staff asked Committee Majority staff whether IRS had ever responded to the questions in the June 2021 letter. That same day, Committee Majority staff confirmed that IRS had not responded to the questions. On December 16, 2022, Committee Majority staff advised Republican staff that they had "unexpectedly" discovered an IRS response to questions in the June 2021, letter while visiting one of the offsite locations. That IRS response was dated December 15, 2022.

It seems Committee Majority never followed-up on the IRS response until the Republican staff reminded them of the June 2021 request and questions. If the true intention is to make public the confidential tax information of a political enemy, perhaps such details from the IRS are not especially relevant. Further, as is noted below, the Joint Committee on Taxation (JCT) completed its entire review and analysis of the tax returns by December 11, 2022, producing a report dated December 15, 2022. The JCT report offers uncertainty about the audit status for one of the tax years under consideration—a question that was answered with clarity in the IRS response letter. During the December 20, 2022, business meeting, JCT Chief of Staff, Tom Barthold, confirmed that not only was JCT not offered the opportunity to update their report with this new information, JCT had never even seen the IRS response letter.

The Committee Majority's hurried approach and lack of due diligence compelled JCT to issue an incomplete report. It points toward the true purpose of the Committee Majority receiving the tax returns—not to make a full evaluation of the Presidential mandatory audit program or even to evaluate the tax return years under consideration—but to publicize tax returns in an attempt to embarrass and destroy a political enemy.

On December 19, 2022, the day before the scheduled closed executive session and a non-voting day in the House, Committee Members and designated staff were permitted to review the 6103 materials in Committee Majority's offices. The review period ran from 11:00 a.m. to 5:00 p.m. Those six hours represented the only chance Committee Members would have to review 6 years

of complex business tax returns and the Committee Majority's accompanying report, and to make a decision about an unprecedented disclosure of confidential tax information by Congress.

December 19, 2022 was the first time that Republicans would learn that Committee Majority had been able to access the 6103 material starting on November 23, 2022 (rather than November 30, which was the indication given by the Committee Majority). Republicans also first learned that Chairman Neal had designated JCT staff as agents and that JCT staff had prepared a short report on the 6103 material. Later in the evening of December 19, 2022, Republican staff learned that Tom Barthold of JCT would be a witness during the closed executive session.

In sum, Committee Majority intended to keep their activities secret as long as possible, perhaps until required to provide public notice of a business meeting to consider public disclosure of the confidential tax information. Only after Treasury publicly confirmed that it had complied with the court order did the Committee Majority consider granting access to Republicans. Even then, the Committee Majority delayed Republican access until the work of Committee Majority and JCT was complete.

This process had nothing to do with improvements to the Presidential mandatory audit program. When considered in its entirety, the purpose of the process behind accessing the tax returns and conducting a closed executive session was to deploy a political weapon against a political enemy.

Committee Democrats Were Careless and Imprudent in Preparing for and Conducting Closed Executive Session to Make the Tax Returns Public

On Friday, December 16, 2022, Chairman Neal sent notice for a closed executive session of the Committee on Tuesday, December 20, 2022, along with a memorandum noting that all Committee Members would be designated as agents on Monday, December 19, 2022, at 11 a.m.

On December 19, Republican staff was told by Committee Majority staff that all Committee Members were actually designated as of Sunday, December 18, 2022. This meant that Chairman Neal and Committee Majority staff were able to start briefing their Members on the 6103 materials on Sunday, while Ranking Member Brady conducted his Sunday Member meetings under the assumption that they could not discuss 6103 materials.

Per the memorandum provided by the Majority staff when the markup was noticed, all Members of the Committee were allowed to come view the Section 6103 material on Monday, December 19, 2022, from 11 a.m. to 5 p.m. While some of the materials were documents that designated agents on the Republican Committee staff previously had the opportunity to review at the IRS, there was also a significant amount of new material to review—including a cover memorandum from Chairman Neal, a report prepared by Majority Committee staff, a report prepared by JCT, and a discussion draft of legislation.

Because the House was in recess on Monday, December 19, 2022, and Members were given little notice as to when the markup would be held, and when they would be allowed to review the material, many Committee Members were unable to make it back to Washington, D.C. to review

the Section 6103 material during the review period designated by the Majority. Thus, some Members were unable to review the material prior the closed executive session.

During the closed executive session on Tuesday, December 20, 2022, Members were given copies of the cover memorandum from Chairman Neal, the report prepared by Committee Majority staff, and a few attachments to the report. Copies of the tax returns, however, were not provided to Committee Members during the closed executive session. In fact, only one copy of the tax returns was made available during prior reviews, and that copy was kept in the Committee's cloakroom during the executive session. Members were given no notice of the location of the tax returns during the executive session, nor were they given an opportunity to review the tax returns during the closed executive session.

The documents produced for markup by Committee on December 20, 2022, were unredacted and recklessly included private personal information, including details about a minor child. As previously noted, Committee Members had been granted access to those unredacted documents from 11:00 a.m. to 5:00 p.m. on December 19, 2022. During the closed session markup, multiple Republican Members expressed alarm—involuntary disclosure of confidential tax information sets a dangerous precedent, and Congress making public any sensitive information about any taxpayer, but especially a minor child violates Congress' sacred duty to the most vulnerable.

This process represents a departure from Committee precedent. For example, during the last executive session by the Committee under Republican leadership, held on April 9, 2014, then Chairman Dave Camp (R-MI) gave members twenty-four hours prior to the meeting to review the materials they would be voting on which related to the Lois Lerner criminal referral. Additionally, both Republican and Democrat Members and staff participated in the more than 10-month long investigation which included more than 60 transcribed interviews and review of 660,000 pages of documents. This transparency helped Members digest the information, which allowed time for thoughtful analysis prior to the executive session. Sadly, none of these steps were taken leading up to or during this week's executive session meeting where the Committee Democrats voted to make public unredacted individual tax returns and return information.

The business meeting itself was fraught with process fouls, breaches of parliamentary procedure, and Committee and House rules violations. Chairman Neal repeatedly departed from regular order, including attempting to move into executive session without a Committee vote, and telling the Republican they would not have an opportunity to offer amendments to the Committee Report under consideration.

Perhaps the most egregious offense was the question of redactions to the individual tax returns and return information, to protect PII, including that of a minor child. After repeated attempts by Republicans to address the issue, and protect taxpayer privacy, Chairman Neal and Committee Majority voted to make public the unredacted tax returns and return information, with "assurances" that redactions would be made at a later date. When pressed about how the process would work, Chairman Neal announced that Committee Majority staff would work with Republican staff to make the redactions, and in the event of a disagreement between the staffs, the Democratic staff would prevail. Not even 16 hours after Chairman Neal gave his word, the

Democratic staff announced that they had completed redactions on their own, with no offer to the Republican staff to participate on a reasonable time table.

Another concern was the presence of Douglas Letter, General Counsel for the House of Representatives, who was seated with the Democratic staff behind Chairman Neal. Meetings in executive session are closed to the public, and even Committee staff must be authorized to be present at such meetings.² Further, 26 U.S.C. § 6103 provides that persons must be authorized as “agents” by the Chairman to inspect returns or return information. Persons other than staff of the Committee on Ways and Means and the Joint Committee on Taxation are not routinely authorized as agents or allowed to be present during executive session meetings to consider 6103 material. Chairman Neal did not disclose to Republican Members that Letter was an agent. When Letter was asked who he was representing, he said he was present to represent the Committee Majority. Letter’s presence was a massive departure from Committee precedent.

Finally, the executive session meeting was scheduled on a day when the House was not in session, only five days prior to the Christmas holiday. Again, this was after repeated requests to Democratic staff for scheduling information, in which Republican Members and staff were given no indication when or even if a business meeting would be held.

In all, the executive session meeting was a failure in planning and execution. The procedural and decorum breakdowns that the Committee on Ways and Means had to endure during the executive session did not live up to the standards that this Committee can, and should, operate. While the Committee may have been operating inside the confines of an executive session, the rules of the House of Representatives and the Committee still apply.

JCT Was Not Given an Adequate Opportunity to Review

Upon being granted access to the materials to be considered at the business meeting, Committee Republicans discovered that staff of the Joint Committee on Taxation (JCT) had been designated as agents, tasked with producing a report on the tax return information. In a stark departure from prior precedent, JCT’s review and analysis was marked by limited access to relevant information, no investigatory power, and tight deadlines. According to the JCT report, JCT staff were granted access to the tax return information on November 30, 2022. JCT states that their analysis concluded on December 11, 2022, and the JCT report is dated December 15, 2022. It appears that Republican staff access to materials was intentionally delayed to hide the fact that JCT was conducting a review. JCT access ended on December 11 and Republican access began on December 12.

Contrasting the Committee Majority’s request here with JCT’s full investigation of a multinational company in 2002 shows how the unreasonable request resulted in a cursory review that does little to inform Committee on legitimate legislative or oversight objectives. In 2002, JCT assigned 34 staff that had full investigatory power. JCT conducted 46 interviews, reviewed

² H. Rule XI 2(g)(1)

100 Bankers Boxes of documents responsive to document requests, and spent six weeks writing a comprehensive three-volume, 2,700-page report.

Here, the Committee Majority's unreasonable request and deadlines forced JCT to assign only 4 staff, which operated with no investigatory power. JCT was not permitted to conduct any interviews or issue any document requests. JCT's 3-day drafting of a cursory 39-page summary report is clear indication that the analysis is incomplete and that JCT should have been granted more time.

What's more, when the IRS finally responded to key questions in Chairman Neal's June 2021 inquiry on December 15, 2022—4 days after JCT completed its brief review—they were not able to revise their report with the updated information. In fact, during the business meeting, JCT confirmed that they never received a copy of the December 15 IRS response. JCT's report repeatedly uses the phrase "we express no opinion," due to lack of necessary information, and it is clear that the report does nothing but raise areas where additional inquiry may be of value. Under questioning during the closed executive session, JCT Chief of Staff, Tom Barthold, stated that JCT was tasked with simply raising questions: indicating that this entire procedure was a solution (public release of the tax returns) in search of a problem (raising questions about the Presidential mandatory audit program).

Ultimately, JCT was forced to respond to a partisan request from Committee Majority to further their partisan objective: make public the confidential tax return information of a single taxpayer in an effort to embarrass and destroy a political enemy.

**The Committee Majority's Conduct of the Closed Executive Session was
Marked by Disorganization and Disregard for Rules and Precedent**

As stated above, Republican Members vehemently oppose the Committee's action of holding a secretive executive session meeting on December 20, 2022, and voting to release unredacted individual tax returns and return information, including (PII) of a minor child – documents that were previously protected as confidential under section 6103 of the Internal Revenue Code.³ Republican Members oppose both the secretive process leading up to the meeting and the procedure and substance of the meeting itself.

Chairman Neal announced the meeting on December 16, 2022, to be held on December 20, 2022, but only provided a cryptic description indicating that the purpose of the meeting would be to consider "Documents protected under Internal Revenue Code section 6103." No additional information was provided in advance, despite repeated attempts to get information from Committee Minority staff.

Further procedural violations and departure from Committee precedent included:

- Persons other than Committee staff were authorized as agents (unbeknownst to Republican Members) and present during the executives session;

³26 U.S.C. § 6103 (2022).

- Republican Members and staff still do not know the full list of individuals designated as agents.
- Members and staff exited and re-entered the business meeting during the executive session;
- The Chairman attempted to enter into executive session without a Committee vote;
- The Committee Report was not designated and not all attachments were in front of Members, or even inside the hearing room, when they were being considered. This led to confusion from Members as to what documents were under consideration and what a vote to report to the House entailed;
- The Chairman did not treat the Committee Majority and Republican Members equally during the technical questioning portion of the meeting, allowing Committee Majority Members to ask questions leading to answers of opinion but did not allow Republican Members to do the same;
- The Chairman allowed Committee Majority staff to make changes to attachments AFTER the Committee had voted on reporting them to the House, likening the edits to “technical and conforming changes.” Republican Members reject the premise that redactions made to these documents are technical and conforming changes;
- Republican Members were initially told the Chairman would not entertain amendments to the Report, violating House rules and breaking with Committee precedent. When the fact that this was a violation was brought to his attention, he allowed Republican Members to offer one amendment before unilaterally stating that the amendment process was over;
- Committee Majority did not provide copies of the material under consideration to the Republican staff until requested, and even then, an adequate number of copies were not provided.

Publication of Private Tax Return Information Does Not Create or Support a Legitimate Legislative Purpose

The Committee’s publication of private tax returns is not supported by a legitimate legislative purpose. This effort began with a single goal: Obtaining and publishing the former President’s tax returns. Everything else has been nothing but a search for a pretextual justification for accomplishing that goal. From the beginning, the Committee Majority has sought to weaponize the tax code to damage their political opponent, the former President, through the publication of his tax returns. Chairman Neal and other Committee Majority Members have made numerous statements demonstrating their true purpose in requesting the President’s tax returns. The following is but a small, representative sample of those comments:

- During the 115th Congress, then Ranking Member Neal stated that “Committee Democrats remain steadfast in [their] pursuit to have [the former President’s] individual tax returns disclosed to the public.”⁴
- Chairman Neal stated earlier this year that “the public has reasonably come to expect that presidential candidates and aspirants release those documents.” He also said that “[w]e

⁴ H.R. Rep. No. 115-309, at 8 (2017) (dissenting views); H.R. Rep. No. 115-73, at 8 (2017) (dissenting views).

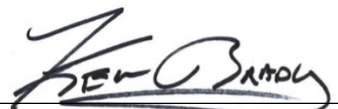
need to approach this gingerly and make sure the rhetoric that is used does not become a footnote to the court case.”⁵

- Another Committee Majority Member noted on television that the Committee’s Oversight Subcommittee hearing was intended to “lay the foundation for the public purpose to acquire access to these returns.”⁶

In contrast, President Nixon voluntarily submitted information to JCT and asked for an examination of his tax returns for reasons completely unrelated to legislation. That voluntary approach did not require a legislative purpose analysis, whereas Chairman Neal’s § 6103 request for the former President’s tax returns must be based on a legitimate legislative purpose. Recent efforts by Democrats to create a legislative purpose is contrary to their prior public statements and serves as a mere pretext for obtaining and publicizing the President’s tax returns for purely political reasons.

Conclusion

It didn’t have to be this way. The Committee Majority’s actions on December 20, 2022, proved Republican Members right. The majority could have reviewed the material behind closed doors, developed legislation, and presented legislation to the Committee in a markup and then to the full House in regular order. Release of the former President’s tax returns **does absolutely nothing** to advance a legislative purpose. The release of the full returns shows that the Committee’s report and legislation on the Presidential Mandatory Audit Program is nothing more than a charade and an effort to provide cover for the political retribution they have executed against the former President. This effort was unnecessary and will leave a stain on the Ways and Means Committee for years to come. The consequences will be significant and even Democrats are likely to come to regret these actions. They may come to regret it sooner than they think.



Kevin Brady
Republican Leader
Committee on Ways and Means

⁵ Mark Sullivan, *Powerful Ways and Means chairman Neal to pursue Trump’s tax returns*, TELEGRAM & GAZETTE (Jan. 23, 2019, 5:41 PM) <https://www.telegram.com/news/20190123/powerful-ways-and-means-chairman-neal-to-pursue-trumps-tax-returns>. Chairman Neal also stated: “We are now in the midst of putting together the case.” *Id.*

⁶ MSNBC, *All In with Chris Hayes* (transcript of television broadcast Feb. 7, 2019), <http://www.msnbc.com/transcripts/all-in/2019-02-07> (statement of Rep. Dan Kildee).

ATTACHMENT A

Timeline of Ways and Means Democrats' Incessant Quest to Obtain and Publish the Tax Returns of the Former President

On April 3, 2019, Chairman Neal sent a letter to IRS Commissioner Rettig requesting individual and select entity tax returns and return information of then-President Donald J. Trump pursuant to Section 6103(f) of the Code. On April 10, 2019, Secretary Mnuchin responded to Chairman Neal explaining that Treasury would not be able to complete review of the request by the April 10th due date. Secretary Mnuchin stated that Treasury had begun consultations with the Department of Justice (DOJ) regarding the request.

On April 13, 2019, Chairman Neal sent a letter to Commissioner Rettig stating that, if the IRS failed to provide the requested returns and return information by April 23, 2019, it would be interpreted as a denial of the request.

On April 23, 2019, Secretary Mnuchin responded to Chairman Neal stating that Treasury expects to provide the Committee with a final decision by May 16, 2019. On the same date, Commissioner Rettig also sent a letter to Chairman Neal stating that Treasury referred the request to DOJ, and the IRS was awaiting further guidance and direction on legal issues prior to responding.

On May 6, 2019, Secretary Mnuchin responded to Chairman Neal stating that the requested tax returns and return information would not be provided. On the same date, Commissioner Rettig also responded to Chairman Neal stating that he concurs with the letter sent by Secretary Mnuchin.

On May 10, 2019, Chairman Neal issued a subpoena to Commissioner Rettig and Secretary Mnuchin for six years of Donald J. Trump's individual and select entity tax returns and return information. The IRS and Treasury failed to comply with the subpoena.

On June 10, 2019, Treasury and IRS staff provided a bipartisan briefing to Committee staff on the mandatory audit program. On June 13, 2019, Committee staff sent Treasury a list of unanswered questions from the briefing. On June 21, 2019, Treasury acknowledged receipt of the June 13 letter. On June 28, 2019, Chairman Neal sent a letter to Treasury and the IRS reiterating concerns following the June 10 briefing.

On July 2, 2019, the Committee filed a lawsuit in the United States District Court for the District of Columbia to obtain the requested tax returns and return information. The case was assigned to Judge Trevor N. McFadden.

On June 16, 2021, Chairman Neal sent a letter to IRS Commissioner Rettig and Treasury Secretary Yellen requesting the individual and select entity tax returns and return information of the former President for tax years 2015 through 2020 pursuant to Section 6103(f). As an accommodation, the letter set forth the Committee's reasoning and need for the tax returns and return information.

On July 30, 2021, the DOJ's Office of Legal Counsel (OLC) rendered an opinion that the Chairman's request was valid.

On December 14, 2021, the United States District Court for the District of Columbia ruled that the Committee could obtain the requested tax returns and return information. On the same day, the former President filed an appeal in the United States Court of Appeals for the District of Columbia Circuit.

On August 9, 2022, a panel of three judges of the United States Court of Appeals for the District of Columbia Circuit affirmed the opinion of the United States District Court for the District of Columbia.

On August 18, 2022, the United States Court of Appeals for the District of Columbia Circuit denied the former President's petition for a rehearing en banc.

On October 27, 2022, the United States Court of Appeals for the District of Columbia Circuit denied the former President's petition for a rehearing en banc.

On October 31, 2022, the former President filed an emergency application for stay with the United States Supreme Court.

On November 1, 2022, United States Supreme Court Justice John G. Roberts, Jr. stayed the mandate of the United States Court of Appeals for the District of Columbia Circuit pending further order of the Supreme Court.

On November 22, 2022, the United States Supreme Court denied the former President's application for stay of the mandate. On the same date, the United States Court of Appeals for the District of Columbia Circuit issued the formal mandate of the Court.

ATTACHMENT B

Republican Staff Letter to Majority Staff Regarding Redaction of Personal Identifiable Information in Committee-Reported Public Documents

COMMITTEE ON WAYS AND MEANS
U.S. House of Representatives
Washington, DC 20515

December 22, 2022

Margaret McGlinch
General Counsel
Committee on Ways and Means
Chairman, Richard E. Neal

Dear Peg,

In recent weeks, Committee Majority staff has not conducted itself in good faith, misleading Republican staff about their intentions and misdirecting the resources of Republican staff.

- Worse, despite warnings by Republican staff, the Committee Majority, in its pursuit of publicly releasing confidential tax information, refused to take steps to protect personal identifiable information, especially for a minor child.
- Deviations from House procedure and precedent throughout this week's meeting and through correspondence with the taxpayer's representatives leave Republican staff no choice but to remove itself from the process.
- We recommend that Committee Majority staff continue its correspondence with representatives for the taxpayer. The taxpayer and his representatives are in the best position to protect his personal identifiable information and that of his minor child.

Exposure of Sensitive Tax Information of Minor Child

The tax return information produced for consideration at the business meeting conducted by the Committee on December 20, 2022 ("the business meeting"), recklessly included private personal identifiable information, including details about the taxpayer's minor child. All Committee Members had been granted access to those documents from 11:00 a.m. to 5:00 p.m. on December 19, 2022. During the closed session of the business meeting, multiple Republican Members expressed alarm—involuntary disclosure of confidential tax information sets a

dangerous precedent, and Congress making public any sensitive information about a minor child would violate its sacred duty to protect the most vulnerable Americans.

Republican Members also condemned the Committee Majority's failure to request the taxpayer's consent prior to a vote to make public the tax return information. The Committee Majority never even gave notice to the taxpayer that tax return and personal identifiable information would be made public. It is also unclear why the Committee Majority chose not prepare a redacted version of the tax returns prior to consideration in the business meeting.

At the end of the closed executive session portion of the business meeting, and after a parliamentary inquiry, Chairman Neal refused to entertain amendments that would have required redaction of personal identifiable information prior to the vote to make the tax return information public. As a result, Committee Majority Members cast a unanimous vote in favor of reporting to the House—and making public—the complete tax return documents and all personal identifiable information.⁷ Republican Members continued to insist that the Committee Majority take steps to protect personal identifiable information, especially for the minor child.

Chairman Neal Commits to Rely on Republican Staff to Ensure Protections in Place for Sensitive Information

During the open session portion of the business meeting, Chairman Neal committed that Committee Majority staff would work together with Republican staff to redact and protect personal identifiable information. After the business meeting, Committee Majority and Republican staff decided to meet the following day, December 21, 2022, to discuss an action plan for jointly reviewing and redacting the tax return information made public by Committee Majority Members during the business meeting.

On the evening of December 20, 2022, Chairman Neal said, with respect to timing for making public the tax return information, "It's going to take a few days, but we believe it's only days. It won't go well beyond that.... The Ways and Means staff and I have faith in the Republican staffers. Let them serve as a check on what it is that we want to do. We have to reach an accommodation that those protections are built in."

Revelation that Committee Majority Staff Misrepresented Intentions to Bring Legislation to Floor Delays Republican Staff's Ability to Assist in Redactions

Before that could happen, at 11:47 p.m. on December 20, 2022, and despite representations by Committee Majority staff to the contrary, the House Majority Leader noticed floor consideration

⁷ All of the tax return information voluntarily disclosed by President Barack Obama including redactions for personal identifiable information like Social Security numbers.

of Chairman Neal's *Presidential Tax Filings and Audit Transparency Act of 2022* ("Presidential Tax Filings Act"), to take place on December 22, 2022. That legislation had never been discussed or marked up in Committee, and the text was only made available on December 19, 2022. Republican staff was forced to immediately redirect all resources to preparing Republican Members for consideration of the Presidential Tax Filings Act at the Rules Committee on December 21, 2022, and on the House floor.

On December 21, 2022, Committee Majority staff advised that they were corresponding with representatives for the taxpayer and that they had committed to the taxpayer's representatives that the redactions would be complete that day. Republican staff is not authorized to discuss, meet, or coordinate, with representatives of the taxpayer in any way. Committee Majority staff did not request approval from Republican staff to engage with the taxpayer's representatives on redactions, nor did Committee Majority staff provide any notice that they were corresponding with the taxpayer's representatives at all. The Committee Majority committed to a deadline with the taxpayer's representatives unilaterally.

Further, with the unexpected swing in priorities toward consideration of the Presidential Tax Filings Act, Republican staff offered to meet with Committee Majority staff after floor consideration of that bill on December 22, 2022, to discuss the action plan for jointly reviewing and redacting the tax return information already made public by Committee Majority Members.

Committee Majority Staff Announces Completion of a Unilateral Redaction of Material, in Gross Violation of Chairman Neal's Pledge

At the close of business on December 21, 2022, Committee Majority staff notified Republican staff that they had unilaterally completed review and redaction of the tax return information that day, violating the aforementioned pledge by Chairman Neal who had said, "The Ways and Means staff and I have faith in the Republican staffers. Let them serve as a check on what it is that we want to do."

Conclusion

The true intentions of Committee Majority are clear: by any means possible, make public the confidential tax return information of a single taxpayer in an effort to embarrass and destroy a political enemy. For that and the following reasons, Republican staff will no longer engage in the process for finalizing documents approved at the business meeting to be reported to the House.

- We refuse to allow the Committee Majority, through its reckless disregard for House procedure and Committee precedent, to expose Republican Members or staff to legal risk regarding disclosure of confidential tax return information.

- Committee Majority staff has undertaken an unauthorized ex parte correspondence with representatives for the taxpayer on this specific issue, making commitments on behalf of Republican staff without consent or notification.
- Committee Majority staff has claimed exclusive decision-making authority on final redactions, and by unilaterally completing the review, the Committee Majority has precluded Republican staff from having any meaningful input. The only option Republican staff would have is to rubber-stamp Committee Majority's decisions.
- Committee Majority staff has not conducted itself in good faith, misleading Republican staff about their intentions and misdirecting the resources of Republican staff.

At this stage, Republican staff recommends that Committee Majority staff continue its correspondence with representatives for the taxpayer. The taxpayer and his representatives are in the best position to protect his personal identifiable information and that of his minor child.

Regards,

A handwritten signature in cursive script, reading "Molly Fromm", is positioned above a horizontal line.

Molly Fromm
General Counsel & Parliamentarian
Committee on Ways and Means
Ranking Member, Kevin Brady

ATTACHMENT C

The Nixon Materials Do Not Establish a § 6103 Precedent

Committee Democrats' attempt to find a precedent for their illegitimate request for the former President's tax returns fails for two additional reasons. First, neither JCT nor the IRS referenced § 6103 in any of the Nixon materials publicly released on July 25, 2019. And second, Congress made significant changes to § 6103 in 1976.

The Nixon Materials, specifically the 1973 and 1974 letters provided by JCT, do not cite to any statutory authority at all in conjunction with the requests to the Internal Revenue Service. It is unclear what, if any, statutory authority JCT relied on when making the requests or on what authority IRS relied on in fulfilling them. Given that President Nixon requested the inquiry and stated that JCT would have all relevant materials, it appears much more likely that the JCT requests relied on the consent of the taxpayer as the basis for obtaining the requested information. Although Mr. Barthold acknowledged in his July 29 letter to Ranking Member Brady that JCT did not have any records indicating there was a consent document, he made clear that the best source for such a document would be IRS records.⁸ The unique context surrounding the Nixon Materials and President Nixon's voluntary submission to a JCT examination make that situation obviously distinguishable to the Ways and Means Committee's more recent request for President Trump's tax returns.

The Democrats' search for a precedent fails to consider the fact that Congress amended 26 U.S.C. § 6103 substantially via the Tax Reform Act of 1976.⁹ Prior to 1976 and during the time JCT was examining President Nixon's tax returns at his request, tax returns and tax return information were considered public records. The Tax Reform Act of 1976 fundamentally changed the treatment of tax returns and return information and established the structure of § 6103 as it generally exists today. Significantly, the Act changed the default rule of § 6103(a) to establish that tax returns and tax return information are presumed confidential subject only to specific statutory exceptions.¹⁰ These amendments to § 6103 marked a significant change in the legal approach to the privacy of taxpayer information. For the first time in modern history, taxpayers had the security of knowing their tax returns and tax information would be kept confidential. Any statutory analysis taking place in 2019 and beyond must be informed by the 1976 amendments that changed the nature of taxpayer privacy protections.

The legislative history surrounding the Tax Reform Act of 1976 demonstrates the significance of the changes it made to the tax code. Protecting taxpayer privacy was central to the debate and Congress intended that the law would prevent misuse of taxpayer information for political purposes. While numerous members of Congress addressed these issues, Senator Bob Dole (R-KS) clearly articulated the importance of the issues Congress was debating at the time:

⁸ Letter from Thomas Barthold, Chief of Staff, Joint Comm. on Taxation, to the Hon. Kevin Brady, Ranking Member, Comm. on Ways and Means (July 29, 2019).

⁹ Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 520 (1976).

¹⁰ Compare 26 U.S.C. § 6103(a) ("Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records.") (1970), with 26 U.S.C. § 6103(a) ("Returns and return information shall be confidential, and except as authorized by this title. . . .") (1976).

I cannot stress enough the importance of preserving the confidentiality of individual tax returns. . . . I speak of a more basic, procedural unfairness in the tax laws which presently permits supposedly confidential individual income tax returns to come into the hands of literally thousands of bureaucrats outside the Internal Revenue Service, and which leaves open the possibility that mischievous political operatives will again attempt to gain access to such returns for partisan political purposes. The tax privacy sections of H.R. 10612 will assure every American that his or her tax return will remain confidential and immune from political misuse.¹¹

Protecting taxpayer information from partisan political misuse was central to the passage of the Tax Reform Act of 1976. Congress intended to prevent what Chairman Neal and Committee Democrats are seeking through their request for President Trump's tax returns.

¹¹ 122 Cong. Rec. 24012-13 (1976) (statement of Senator Bob Dole).